

4 Jun 11, 2018

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

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8 TOPP CREEK FARMS, LLC, a
9 Washington limited liability company,
10 Plaintiff,

NO. 1:18-cv-03056-SAB

ORDER REMANDING CASE

11 v.
12 RURAL COMMUNITY INSURANCE
13 COMPANY a/k/a RURAL COMMUNITY
14 INSURANCE SERVICES, a foreign
15 insurance company,
16 Defendant.

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18 Before the Court are Defendant's Motion to Dismiss and Compel
19 Arbitration, ECF No. 8, Plaintiff's Motion to Remand, ECF No. 11, and
20 Defendant's Motion to Amend Caption, ECF No. 19. The motions were heard
21 without oral argument. For the reasons stated herein, Plaintiff's motion to remand
22 is granted and Defendant's motions are denied as moot. This case is remanded to
23 the Washington State Superior Court for Yakima County for further proceedings.

24 On March 6, 2018, Plaintiff filed a complaint in Yakima County Superior
25 Court seeking damages pursuant to an insurance policy issued by Defendant. ECF
26 No. 4-1. A summons and copy of the complaint were mailed to the State of
27 Washington Office of the Insurance Commissioner ("OIC") that same day. ECF
28 No. 12-1 at 2. The OIC accepted service of process on March 9, 2018, and issued a

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1 Certificate of Service upon Defendant on March 12, 2018. ECF No. 4-1 at 10. The
2 OIC sent a copy of the certificate to both Plaintiff's and Defendant's counsel.
3 Plaintiff's counsel received the certificate on March 14, 2018, filed a copy in state
4 court, and emailed the same to counsel for Defendant. ECF No. 12. Defendant
5 likewise received the certificate on March 14, 2018. ECF No. 18. Defendant
6 removed this action on April 10, 2018. ECF No. 1.

7 An action brought in state court of which the federal courts have original
8 jurisdiction may be removed to the district court of the United States for the district
9 where such action is pending. 28 U.S.C. § 1441(a). 28 U.S.C. § 1446(b)(2)(B)
10 provides that each defendant has thirty days after receipt by or service on that
11 defendant.

12 The parties concede that diversity jurisdiction exists and that Defendant filed
13 its notice of removal thirty-one days after service upon the OIC, Defendant's
14 statutory agent authorized to accept service on its behalf. Defendant is a foreign
15 insurance company. Wash. Rev. Code § 4.28.080(7)(a) provides that service is
16 made on a foreign insurance company as provided in Wash. Rev. Code
17 § 48.05.200. That provision provides that:

18 (1) Each authorized foreign or alien insurer must appoint the
19 commissioner as its attorney to receive service of, and upon whom
20 must be served, all legal process issued against it in this state upon
21 causes of action arising within this state. *Service upon the*
commissioner as attorney constitutes service upon the insurer. Service
22 of legal process against the insurer can be had only by service upon
23 the commissioner, except actions upon contractor bonds pursuant to
RCW 18.27.040, where service may be upon the department of labor
24 and industries.

25 (2) With the appointment the insurer must designate by name, email
26 address, and address the person to whom the commissioner must
27 forward legal process so served upon him or her. The insurer may
28 change the person by filing a new designation.

(3) The insurer must keep the designation, address, and email address filed with the commissioner current.

(4) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom.

(5) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

Wash. Rev. Code § 48.05.200 (emphasis added).

In *Costco Wholesale Corporation v. Nationwide Insurance Company*, No. C11-1550RAJ, 2011 WL 13228578 (W.D. Wash. Nov. 29, 2011), the United States District Court for the Western District of Washington held that the removal clock commences when the OIC accepts service of process and forwards a certificate of service to the insurer. *Id.* at *3. In rebuttal, Defendant cites out-of-state and out-of-circuit cases for the proposition that other courts hold that service of process is effective only when the defendant actually receives a copy of the complaint. The Court finds *Costco Wholesale Corporation* applicable in this case. Interpreting Wash. Rev. Code § 48.05.200, the Western District of Washington properly held that “[s]ervice upon the commissioner as attorney constitutes service upon the insurer” for removal purposes. As Defendant concedes, the OIC accepted service on March 9, 2018 and issued a Certificate of Service to Defendant. Defendant did not remove this case until April 10, 2018, thirty-one days after commencement of the removal clock. Accordingly, the Court finds that Defendant’s removal was untimely under Washington law and remands this case to Yakima County Superior Court.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Dismiss and Compel Arbitration, ECF No. 8, is
3 **DENIED as moot.**

4 2. Plaintiff's Motion to Remand, ECF No. 11, is **GRANTED.**

5 3. Defendant's Motion to Amend Caption, ECF No. 19, is **DENIED as**
6 **moot.**

7 4. The above-captioned case is **REMANDED** to Yakima County Superior
8 Court.

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
10 file this Order, provide copies to counsel, and **close** this file.

11 **DATED** this 11th day of June 2018.



15 A handwritten signature in blue ink that reads "Stanley A. Bastian".

17 Stanley A. Bastian
18 United States District Judge